

ESTATE OF PETER VALLEE
(Coeur d'Alene N-1056, Deceased)

IBIA 75-25

Decided November 20, 1974

This is an order of remand to an Administrative Law Judge to correct error by the conduct of new and further proceedings.

Docketed and remanded.

1. Indian Probate: Secretary's Authority: Generally

Where it becomes necessary, the Secretary may in the exercise of his supervisory authority reserved in 43 CFR 4.5, assume original jurisdiction of a pending Indian probate, to correct an error of omission which occurred after the enactment of a statute and prior to the publication of

appropriate regulations, and he may remand the case to an Administrative Law Judge for further proceedings.

2. Indian Probate: Generally

Proceedings under the regulations in 43 CFR Part 4 Subpart D §§ 4.300 et seq. 39 F.R. 31636 August 30, 1974, published to implement the Act of September 29, 1972 (86 Stat. 744), relative to the right of a tribe to purchase lands of unenrolled heirs of deceased members of the Nez Perce Tribe having less than 1/4 blood of the Tribe are matters of probate, and they are not matters which are the subject of appeal from decisions of administrative officers of the Bureau of Indian Affairs to be decided under the delegation of authority contained in the December 14, 1973 amendment of the Departmental Manual appearing at 211 DM 13.7.

3. Indian Probate: Rehearing: Pleading, Timely Filing

Where the Nez Perce Tribe has indicated its intent to take the interests of the heirs who are not enrolled in that Tribe, under authority of the Act of September 29, 1972 (86 Stat. 744), the order determining the heirs of the decedent does not terminate probate under said Act, further proceedings being necessary for determination of the fair market value, and when for lack of such further proceedings, the time for filing a petition for rehearing does not begin to run upon entry of said order except as to those issues of heirship and the like decided in the order determining heirs.

APPEARANCES: David C. Vallee, pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE MCKEE

Peter Vallee, an unallotted, unenrolled Indian of the Coeur d'Alene Indian Reservation No. N-1056 died intestate possessed of trust or restricted property on the Nez Perce Reservation in Idaho on October 21, 1968.

The Act of September 29, 1972 (86 Stat. 744) was entitled:

To provide with respect to the inheritance of interests in restricted or trust land within the Nez Perce Indian Reservation, and for other purposes.

Section 4 of the Act is as follows:

The provisions of this Act shall apply to all estates pending before the Examiner of Inheritance on the date of this Act and to all future estates, but shall not apply to any estate heretofore closed.

[1] On the date the Act was approved, the probate of the estate of Peter Vallee was pending before Administrative Law Judge Elge (formerly Examiner of Inheritance), and on June 6, 1973, the order determining heirs in the estate was entered. Therein it was determined that David Charles Vallee, the appellant herein, Joan Vallee

Villegas, of the Coeur d'Alene Reservation, Theresa Vallee Buffalohead, of the Coleville Reservation, Peter B. Vallee, Jr. and Michael Dean Vallee, both of the Coeur d'Alene Reservation, children of the decedent, each inherited a 2/15 interest of the decedent's lands on the Nez Perce Reservation.

On August 23, 1973, the Administrative Law Judge ordered distribution of all of the decedent's estate, except those interests on the Nez Perce Reservation passing to the above-designated heirs. The Judge thereby retained jurisdiction of those lands pending a determination of the rights of the Nez Perce Tribe under the Act of September 29, 1972, supra, to take the same under the tribal resolution of August 31, 1973, upon full payment of the fair market value to the Superintendent on behalf of the said heirs. According to the probate inventory, the decedent died owning an undivided 1/2 interest in a portion of the allotment of Sophia Thomas, allotment No. 838, described as lot 2, sec. 5, T. 36 N., R. 1 W., Boise Meridian, Idaho, containing 36.6 acres more or less. This property was there shown to have an estimated value of \$10,000.

Thereafter, on January 14, 1974, upon a full appraisal by the Bureau of Indian Affairs, Area Chief Appraiser Richard C. Swanson, the property was assigned a value of \$8,000 as of the date of the

decendent's death on October 21, 1968. David C. Vallee objected to this value declaring it to be less than the fair market value as it is required to be determined by the statute. He went so far on March 28, 1974, as to file an action in United States District Court for the Eastern District of Washington, entitled David C. Vallee, Plaintiff v. Bureau of Indian Affairs and Nez Perce Tribe, Civil Action C-74-77, seeking relief from the alleged low appraisal. This action is still pending, but it is presumed to be subject to dismissal for failure to exhaust administrative remedies.

Thereafter, on July 24, 1974, the Bureau of Indian Affairs again appraised the property as of October 21, 1968, the date of the death of the decedent, and valued it at \$9,300 to which the said David C. Vallee also objects. Proceedings to this point are interlocutory only.

[2, 3] Under procedures then being followed without the guidance of regulations, the money for a 2/15 portion of the decedent's 1/2 interest in allotment No. 838 was peremptorily transferred by the Superintendent without any order or directive from the tribal account monies in his control to the individual accounts of each of the five heirs whose interests were subject to taking by the Tribe. The fair market value has never been "determined by the Secretary"

as required by the statute. The matter was appealed to the Board of Indian Appeals as an appeal from the decision of an administrative officer of the Bureau of Indian Affairs under 211 DM 13.7 as amended December 14, 1973.

In the meantime, new regulations implementing the Act of September 29, 1972, supra, were published on August 30, 1974 (39 F.R. 31635) effective in 30 days. It is determined here that the said Act does not provide for the determination of fair market value as an administrative action of the Bureau of Indian Affairs. Fair market value is a determination to be made by an Administrative Law Judge upon agreement of the parties, or if no agreement can be reached, then after a hearing held in conjunction with the performance of his probate adjudication.

The finding is made that the heirs of this decedent have been deprived of due process in the determination of the fair market value of the interests in the lands on the Nez Perce Reservation, and further, that such due process may now be afforded to them by following the procedures set forth in 39 F.R. 31635, supra, adding to 43 CFR Part 4, new sections 4.300-4.317.

It is further noted that on July 18, 1973, subsequent to the entry of the order determining heirs the inventory of the Nez Perce land was modified to include an omitted interest. It is shown that in addition to the land included in the probate inventory at the date of death, the decedent was the owner of an undivided 1/2 interest in Nez Perce tract No. 182-M147 described as the N 1/2 SE 1/4, SW 1/4 SE 1/4, sec. 7, T 36 N., R 4 W., B.M. containing 120 acres more or less. However this land was not assigned a value, and the modification of the inventory was not considered by the Nez Perce Tribe at the time it filed its selection of land interests to be taken from the heirs under the Act of September 29, 1972, supra. Any further proceedings in this probate relative to the determination of the fair market value and the disposition of those interests passing to the ineligible heirs should include all of the land located on the Nez Perce Reservation owned by the decedent at the time of his death.

NOW, THEREFORE, under and by virtue of the authority contained in the delegation of December 14, 1973 (211 DM 13.7) and in 43 CFR 4.1, this matter is REMANDED to Administrative Law Judge Elge for further proceedings according to the findings herein, and issuance

of a decision final for the Department unless appealed pursuant to the regulations published in 39 FR 31635 et seq.

This decision is final for this proceeding.

David J. McKee
Chief Administrative Judge

We concur:

Alexander H. Wilson
Administrative Judge

Mitchell J. Sabagh
Administrative Judge